

AMENDED IN SENATE JANUARY 16, 2004

AMENDED IN SENATE JANUARY 12, 2004

AMENDED IN SENATE JANUARY 5, 2004

AMENDED IN SENATE APRIL 22, 2003

SENATE BILL

No. 433

Introduced by Senator Ortiz
(Coauthors: Senators Alarcon and Romero)

February 20, 2003

An act to add Section 22980.05 to, and to repeal and add Section 22974.8 of, the Business and Professions Code, relating to tobacco.

LEGISLATIVE COUNSEL'S DIGEST

SB 433, as amended, Ortiz. Tobacco products: licensing of retailers.

(1) The Cigarette and Tobacco Products Licensing Act of 2003 requires the State Board of Equalization to take action against a retailer convicted of furnishing tobacco products to a person under 18 years of age. Prior to suspending or revoking a retailer's license to sell cigarette and tobacco products, the act requires the board to notify the retailer and include instructions for appealing the license suspension or revocation. The act prescribes penalties for the first through 8th convictions. The act limits when the board has authority to take action against retailers.

This bill would make changes to those penalties for convictions by requiring the board to revoke a licensee's license for specified periods upon multiple convictions. *The bill would provide that convictions for violations at one retail location or against a prior retail owner shall not be accumulated against other locations of the licensee or against a new*

retail owner. The bill would authorize a hearing to appeal a license revocation. The bill would repeal the limitations on the board's authority to take action against retailers.

The bill would also require a state or local law enforcement agency to notify the board of any violation involving a licensee or licensed premises within 30 days of a final judgment. By creating additional duties for a local law enforcement agency, the bill would impose a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 22974.8 of the Business and Professions
- 2 Code is repealed.
- 3 SEC. 2. Section 22974.8 is added to the Business and
- 4 Professions Code, to read:
- 5 22974.8. (a) In addition to any other civil or criminal penalty
- 6 provided by law, any conviction of a violation by a licensee of
- 7 Section 22958, 22960, 22962, or 22963, or subdivision (a) of
- 8 Section 308 of the Penal Code is grounds for the revocation of a
- 9 license.
- 10 (b) If a conviction of a violation described in subdivision (a) is
- 11 determined by the state or local law enforcement agency to have
- 12 been committed by an agent of a licensee, the board shall deem true
- 13 this determination. This board action may be appealed pursuant to
- 14 subdivision (d).
- 15 (c) If the board finds that there are grounds for revocation of a
- 16 license, the board shall impose the following sanctions:



1 (1) Upon a finding by the board of a second conviction of a
2 violation of any of the provisions described in subdivision (a),
3 within a five-year period, by a licensee or by any agent or
4 employee of a licensee, the license shall be revoked for 30 days.

5 (2) Upon a finding by the board of a third conviction of a
6 violation of any of the provisions described in subdivision (a),
7 within a five-year period, by a licensee or by any agent or
8 employee of a licensee, the license shall be revoked for 90 days.

9 (3) Upon a finding by the board of a fourth conviction of a
10 violation of any of the provisions described in subdivision (a),
11 within a five-year period, by a licensee or by any agent or
12 employee of a licensee, the license shall be revoked for 120 days.

13 (4) Upon a finding by the board of a fifth conviction of a
14 violation of any of the provisions described in subdivision (a),
15 within a five-year period, by a licensee or by any agent or
16 employee of a licensee, the license shall be revoked for 365 days.

17 (d) (1) Any licensee whose license is revoked under
18 subdivision (c) may petition the board for a redetermination of this
19 revocation within 30 days after service upon that licensee of the
20 notice of this revocation. If a petition for redetermination is not
21 filed within the 30-day period, the revocation becomes final at the
22 expiration of the 30-day period.

23 (2) Every petition for redetermination shall be in writing and
24 shall state the specific grounds upon which the petition is founded.
25 The petition may be amended to state additional grounds at any
26 time prior to the date on which the board issues its order or decision
27 upon the petition for redetermination.

28 (3) If the petition for redetermination is filed within the 30-day
29 period, the board shall redetermine the revocation and, if the
30 retailer has so requested in the petition, shall grant the retailer an
31 oral hearing and shall give the retailer at least 10 days notice of the
32 time and place of the hearing. The board may continue the hearing
33 from time to time as may be necessary.

34 (4) The order or decision of the board upon a petition for
35 redetermination becomes final 30 days after mailing of notice
36 thereof.

37 (5) Any notice required by this subdivision shall be served
38 personally or by mail. If by mail, the notice shall be placed in a
39 sealed envelope, with postage paid, addressed to the licensee at the
40 address as it appears in the records of the board. The giving of

1 notice shall be deemed complete at the time of deposit of the notice
2 in the United States Post Office, or a mailbox, subpost office,
3 substation or mail chute, or other facility regularly maintained or
4 provided by the United States Postal Service, without extension of
5 time for any reason. In lieu of mailing, a notice may be served
6 personally by delivering to the person to be served and service
7 shall be deemed complete at the time of that delivery. Personal
8 service to a corporation may be made by delivery of a notice to any
9 person designated in the Code of Civil Procedure to be served for
10 the corporation with summons and complaint in a civil action.

11 *(e) Convictions of violations by a retailer at one retail location*
12 *may not be accumulated against other locations of that same*
13 *retailer.*

14 *(f) Convictions of violations accumulated against a prior retail*
15 *owner at a licensed location may not be accumulated against a*
16 *new retail owner at the same retail location.*

17 SEC. 3. Section 22980.05 is added to the Business and
18 Professions Code, to read:

19 22980.05. (a) A state or local law enforcement agency shall
20 notify the board of any violation over which the board has
21 jurisdiction that involves a licensee or licensed premises, within 30
22 days of a final judgment.

23 (b) Notice by a state or local law enforcement agency to the
24 board shall include all of the following:

25 (1) A certified copy of the final judgment for a criminal or civil
26 case.

27 (2) The retailer's license information for the location at which
28 the violation occurred.

29 (3) If the judgment is only against an employee, the result of an
30 administrative hearing concluding that the sales clerk was an agent
31 of the retailer at the time of the violation.

32 SEC. 4. Notwithstanding Section 17610 of the Government
33 Code, if the Commission on State Mandates determines that this
34 act contains costs mandated by the state, reimbursement to local
35 agencies and school districts for those costs shall be made pursuant
36 to Part 7 (commencing with Section 17500) of Division 4 of Title
37 2 of the Government Code. If the statewide cost of the claim for
38 reimbursement does not exceed one million dollars (\$1,000,000),

- 1 reimbursement shall be made from the State Mandates Claims
- 2 Fund.

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